

AO 91 (Rev. 02/09) Criminal Complaint

United States District Court
for the
Western District of NEW YORK

United States of America)
)
v.) Case No. 14-M- 1083
)
JOSUE JOEL CASTANEDA-CUYUCH)
 Defendant)
)
)

CRIMINAL COMPLAINT

On or about the date of September 11, 2014, in the Western District of New York, the above-named defendant, an alien and not a citizen of the United States, was knowingly and unlawfully found in the United States after having previously been deported or removed from the United States, and without first seeking permission to reenter the United States from the Attorney General of the United States or his successor, the Secretary of the Department of Homeland Security; in violation of Title 8, United States Code, Section 1326(a).

This criminal complaint is based on these facts:

Continued on the attached sheet


Ana J. Eisner

Complainant's signature

ANA J. EISER, Border Patrol Agent
U.S. Border Patrol

Printed Name and Title

Sworn to before me and signed in my presence,

Date: September 23, 2014


Jeremiah J. McCarthy

JEREMIAH J. McCARTHY
United States Magistrate Judge

City and State: Buffalo, New York

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ERIE)
CITY OF BUFFALO) SS:

Ana J. Eiser, being duly sworn, deposes and says that:

1. I am a Border Patrol Agent with the United States Border Patrol; hereafter referred to as Border Patrol, and have been so employed for 9 years.
2. As a part of my duties during my employment with the Border Patrol, I have investigated violations of the Immigration and Nationality Act and violations of the United States Code, in particular, Title 8, United States Code, Section 1326(a), by being an alien found in the United States after previously being removed from the United States.
3. This affidavit is based upon my own knowledge, my review of official records of the former Immigration and Naturalization Service (INS) and current Immigration & Customs Enforcement (ICE) and upon information that I obtained from other law enforcement officers involved with this investigation.
4. I make this affidavit in support of the annexed Criminal Complaint charging JOSUE JOEL CASTANEDA-CUYUCH with a violation of Title 8, United States Code, Section 1326(a), being an alien found in the United States after previously being removed/deported from the United States.

5. Since this Affidavit is being submitted for the limited purpose of securing a criminal complaint, I have not included every fact known to me concerning this investigation. I have set forth only facts that I believe are necessary to establish probable cause to demonstrate that Title 8, United States Code, Section 1326(a) has been violated.

6. On September 11, 2014, Border Patrol Agents Pitts and Becker responded to a call from Warsaw Police Department in Warsaw, New York. Officer Linderman stated he needed assistance with six individuals encountered during a traffic stop in Warsaw, New York, in the Western District of New York after the vehicle was stopped for speeding and failure to maintain proper lane of traffic. Agent Pitts encountered CASTANEDA-CUYUCH, a passenger in the vehicle, and he stated he was a citizen of Guatemala and that he was illegally present in the United States. The other five subjects all stated they were citizens of other countries and that they did not have any authorization to be or remain in the United States. All six were placed under arrest and transported to the Buffalo Border Patrol Station for processing.

7. Upon arrival at the Buffalo Border Patrol Station, a complete set of fingerprints were electronically captured from CASTANEDA-CUYUCH and submitted to the Federal Bureau of Investigation (FBI), Identification Division, in Clarksburg, WV, via the Integrated Automated Fingerprint Identification System (IAFIS). This set of fingerprints produced a positive biometric match with an Alien registration number (A#200 897 XXX). A check of fingerprints in the IDENT system revealed a prior removal from the United States.

8. Further checks and questioning revealed that CASTANEDA-CUYUCH first entered the U.S. in 1998 from Mexico by wading the Rio Grande near Eagle Pass, Texas, and he traveled to Houston, Texas and then he went to Spring Valley, New York. He stated he stayed in the United States until February 2001 when he returned to Guatemala to see his parents.

9. CASTANEDA-CUYUCH stated he returned to the United States in December 2004. He stated he again entered the U.S. illegally by wading the Rio Grande near Eagle Pass, Texas and traveled back to Spring Valley, New York. In March 2009, CASTANEDA-CUYUCH departed the United States and returned to Guatemala because his mother was ill, and in 2010, he returned to the United States. Thereafter, CASTANEDA-CUYUCH was apprehended by the Border Patrol on August 6, 2010 and processed for Expedited Removal. He was removed from the United States at Phoenix, Arizona on August 20, 2010 and returned to Guatemala.

10. CASTANEDA-CUYUCH stated he last entered the U.S. illegally on March 10, 2011, near Eagle Pass, Texas, and he made his way back to Spring Valley, New York. Approximately, two weeks before he was encountered by the Warsaw police, he began working for Sage Construction and came to Buffalo to work on a senior citizen housing project. He and his coworkers were returning to Spring Valley when they were stopped by the Warsaw, New York Police Department and were turned over to the Border Patrol.

11. A search of the Department of Homeland Security's Immigration and Customs Enforcement Central Index System (CIS) revealed that since his removal to Guatemala on August 20, 2010, CASTANEDA-CUYUCH applied for Deferred Action for Childhood Arrivals and for Employment Authorization on November 22, 2013. A check of the Central Index System and Computer Linked Application Information Management System (CLAIMS) confirmed this and showed that he was issued A207066XXX and his surname was correctly spelled as 'CASTANEDA'. The CLAIMS system shows that to date, CASTANEDA-CUYUCH had not received deferred action or employment authorization. CASTANEDA-CUYUCH confirmed that he has been waiting for a response, and has not received work authorization or deferred action.

12. CASTANEDA-CUYUCH has no valid immigration status in the United States and is present illegally in violation of the Immigration and Nationality Act. In addition, there is no evidence that CASTANEDA-CUYUCH sought or was granted any authorization or approval from the Attorney General of the United States, or the Secretary of the Department of Homeland Security, for him to have re-entered the United States after his removal to Guatemala on August 20, 2010.

WHEREFORE, it is respectfully submitted that probable cause exists to believe that JOSUE JOEL CASTANEDA-CUYUCH did commit the offense of illegal reentry after deportation or removal, in violation of Title 8, United States Code, Section 1326(a), in that he, a Guatemala citizen and alien, having been ordered removed from the United States on August 6, 2010, and having been physically removed from the United States on August 20,

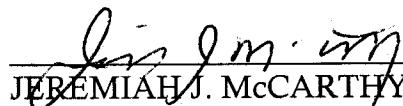
2010, was thereafter found present in the Western District of New York, without prior authorization or approval from the Attorney General of the United States, or the Secretary of the Department of Homeland Security, and ask that a complaint be issued.



ANA J. EISNER
Senior Patrol Agent
U.S. Border Patrol

Sworn to before me this

23rd day of September, 2014.



JEREMIAH J. McCARTHY
United States Magistrate Judge